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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave., 3rd Floor
Washington, D.C. 20536



File: WAC 01 242 52693 Office: CALIFORNIA SERVICE CENTER

Date:

APR 18 2003

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



PUBLIC COPY

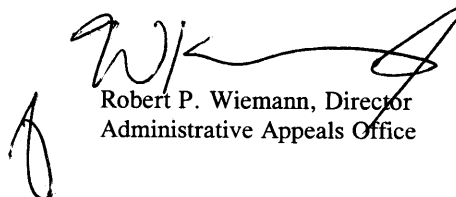
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was incorporated in 1996 in the State of California and is claimed to be an affiliate of [REDACTED] located in Indonesia. The petitioner claims that its purpose is to engage in the importation and sales of furniture parts. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary has been and will be acting in a managerial or executive capacity.

On appeal, counsel asserts that the director's denial erroneously placed excessive emphasis on the size of the petitioning organization and submits a brief in support of such claim.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement

which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this proceeding is whether the beneficiary has been and will be performing duties that are primarily managerial or executive.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the petition, the petitioner provided the Bureau with the following description of the duties that the beneficiary has been and would continue to perform in the United States:

Since his transfer, [the beneficiary] has been President of [the petitioner]. As president of our company, he directs the management of our company, establishes the goals and policies of our company, exercises wide latitude in discretionary decision-making and reports directly to the Board of Directors of [the petitioning organization].

Furthermore, he is responsible for managing our company, supervising and controlling the works of our company's all other supervisory, professional, or managerial employees, hiring and firing employees so supervised or controlled, and exercising direction over the day-to-day operations of our company.

In response to the director's request for additional evidence, issued on January 10, 2002, the petitioner provided the following list of the beneficiary's duties:

- Responsibility for all company activity
include: making a profit, relationship with all customers vendors (emphasis in original)
- Manage all employee [sic]
- Keep the good quality of products
- Development [sic] new design of products
- Communicate with all the vendors inside and outside U.S.

According to the organization chart provided by the petitioner, the beneficiary directly supervises three employees. The following are the job titles and duties for those three subordinates:

California Sales Manager

- Responsibility to President for all sales in California
- Selling products to all customer [sic] in California
- Support sales efforts in California
- Making a report to President every month

National Sales Manager

- Responsibility to President for all sales in U.S.
- Selling products to all customer [sic] U.S.
- Responsibility for all sales in U.S.
- Making a report to President every month
- Expose company to as many potential customers as possible

Operational Manager

- Responsibility to President for all activity in warehouse and office
- Responsibility to President for all accounting activity
- Making a report to President every month

The director denied the petition on March 21, 2002 concluding that the beneficiary does not supervise professional or managerial employees and therefore cannot be considered a manager or executive.

On appeal, counsel asserts that the director placed undue emphasis on the size of the petitioning organization and concluded erroneously that the beneficiary does not supervise professional employees. Counsel states further that the beneficiary supervises both of the company's sales managers who, in turn, oversee the petitioner's most essential function, i.e. the sales function, as well as the operational manager who, with the help of an outside accounting firm takes care of the petitioner's accounting needs. Although all three of the beneficiary's immediate subordinates perform tasks that are essential to the petitioning organization, the record contains no evidence demonstrating that any of the three employees are either managerial or professional.

As previously pointed out by the director in her decision, 8 C.F.R. § 204.5(k)(2) defines the term "profession" as any occupation listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Even though the director emphasized this definition in her denial, the petitioner has provided no evidence that any of the beneficiary's subordinates have baccalaureate degrees or that their positions for the petitioning organization require such degrees. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The descriptions of duties provided in response to the request for additional evidence do not indicate that the positions that are directly subordinate to the beneficiary require anything more than experience in the sales and accounting fields. Merely having managerial titles is not sufficient to classify any of these individuals as professional or managerial as counsel seems to imply.

Counsel also argues that the petitioning entity has enough employees to relieve the beneficiary from having to perform nonqualifying duties. The names and job descriptions of the petitioner's current employees have been submitted. However, in determining whether the nature of the beneficiary's duties can be classified as executive or managerial, the Bureau will first look to the description of the proposed job duties. See 8 C.F.R.

§ 204.5(j)(5). In the instant case, the petitioner provides the following additional list of the beneficiary's proposed duties:

3. The Beneficiary is responsible for overseeing the overall operation of the corporation. He manages the corporation. He also directs to maintain good quality of products and develop new design of products. He also supervises to assure good communication with all vendors inside and outside US.
4. Owing to his position in the corporation and as the highest-ranking executive in the corporation, there is no preset requirement as to when or how he should work or what percentage of time must be devoted to each managerial duty. He will have to and has the ultimate discretion to allocate time spent on each of the managerial duty according to the actual need of the business from time to time.

The above description provides no additional insight into the beneficiary's daily tasks and essentially restates the prior description. Therefore, it is still unclear what "overseeing the overall operation" or "direct[ing] to maintain good quality of products" means. The only clear indication from the description of duties is that the beneficiary is personally involved with developing new product designs and communicating with vendors. However, neither of these duties can be considered managerial or executive. Thus, the only duties that illustrate more clearly what the beneficiary will be doing are not qualifying. Since counsel states that "there is no preset requirement as to when or how he should work or what percentage of time must be devoted to each managerial duty" the Bureau cannot determine how much of the beneficiary's time is spent on non-qualifying or potentially qualifying tasks.

The director's consideration of the size of the petitioning organization comports with current law. While size cannot be the sole consideration in determining eligibility for multinational manager or executive status, the director can and should consider the size of the petitioner's personnel for the purpose of establishing whether the petitioner has a sufficient staff to relieve the beneficiary from performing non-qualifying duties. In the instant case, the beneficiary's duties indicate that he continues to perform non-qualifying tasks; therefore, regardless of the petitioner's size the beneficiary does not primarily fill the role of a manager or executive.

Upon review of the record, it is determined that the description of duties to be performed by the beneficiary in the proposed position does not persuasively demonstrate that the beneficiary will be primarily acting in the capacity of a manager or executive.

Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. The Bureau is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.